

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  QWEST CORPORATION	DOCKET NO. RPU-01-10
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**ORDER DENYING APPLICATION FOR REHEARING**

(Issued March 26, 2002)

On November 6, 2001, Qwest Corporation (Qwest) filed for approval of a new price regulation plan (New Plan) negotiated with the Consumer Advocate Division of the Department of Justice (Consumer Advocate). In the New Plan, Qwest made certain changes to its original price regulation plan, some of which were substantive. On February 4, 2002 the Utilities Board (Board) issued an order approving the New Plan.

In approving the New Plan, the Board adopted the procedures, proposed by Frontier and supported by the testimony of a Consumer Advocate witness in Docket No. INU-01-1, to process a tariff filing by Qwest under the provisions of III.G of the New Plan. If Qwest filed a proposed tariff to reduce a basic communications services (BCS) price in an exchange or group of exchanges under the provisions of III.G of the New Plan, Qwest would be required to file evidence of competition before the proposed tariff would be approved. If a competitor objected to the proposed tariff, the tariff would be suspended and supporting cost studies would be required.

On February 25, 2002, Qwest filed an application for rehearing on the following language: "If a competitor objects, the rate will be suspended and supporting cost studies will be required to be filed and an evidentiary hearing will be held."<sup>1</sup> Qwest argues that requiring an evidentiary hearing upon the filing of an objection effectively thwarts any attempt by Qwest to meet competition.

Qwest contends that mandating an evidentiary hearing if an objection is filed provides an incentive for a competitor to file an objection, knowing that it will significantly delay approval of the proposed price decrease. Qwest contends that the Board's rules are adequate to address the issue of whether there is competition in an exchange for purposes of approving a proposed tariff filed under the provisions of III.G of the New Plan. Qwest refers the Board to 199 IAC chapter 6, which establishes procedures for filing a complaint. Under these procedures that include an informal and formal complaint process, Qwest asserts it could respond with additional evidence of competition and Board staff could review that evidence in determining the resolution to an informal complaint. If the complaint is not resolved, the Board could then suspend the proposed tariff. Thus Qwest asserts, chapter 6 provides for a rapid disposition of complaints while providing protection to competitors.

Qwest then states that the Board's concern that BCS prices are above cost could easily be satisfied by simply requiring that "Qwest affirm that the new responsive rate is above cost as part of its tariff transmittal." If there is disagreement concerning the cost support, Qwest then asserts that a complaint can be filed under

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<sup>1</sup> The Board's order does not contain the phrase, "and an evidentiary hearing will be held."

the provisions of chapter 6. Qwest requests that the Board's order of February 4, 2002, be modified by eliminating the sentence set out above.

The Board has reviewed Qwest's application for rehearing and finds that there is not sufficient reason presented to grant the application. The Board notes that the language quoted by Qwest in its application contains a phrase about an evidentiary hearing that is not in the order. The procedure adopted by the Board for when an objection is filed allows the Board to schedule an evidentiary hearing if the objection is not satisfied by the filing of additional cost data.

If the objection is not satisfied, Qwest will have to provide cost support for its BCS rate reduction with expert witnesses and this cannot be done through the Board's informal complaint process. The rate reduction would have to be suspended during the review and any subsequent hearing. Consistent with the Board's usual practice when both the complainant and respondent are public utilities, a complaint by a competitor that a rate is below cost is most efficiently handled in formal proceedings.

The procedure in the February 4, 2002, order was presented in this case by Frontier and described by Dr. Habr, a Consumer Advocate witness in Docket No. INU-01-1. Qwest in its brief in this case cited Dr. Habr's testimony in Docket No. INU-01-1 to support Qwest's position that part III.G of the New Plan was distinguishable from Iowa Code § 476.1D. Dr. Habr testified that section III.G of the New Plan had a cost standard and rate reductions filed under III.G could not go

below the "cost of the service." (Docket No. INU-01-1, p. 429, line 4, through p. 430, line 1).

Dr. Habr also testified in Docket No. INU-01-1 that a CLEC could file to suspend the BCS rate reduction under III.G of the New Plan and the burden would be on Qwest to prove that the rate is above cost. (Tr. pp. 435-36). Even though Qwest did not specifically cite to this later portion of the testimony of Dr. Habr, the Board considered Qwest to be in support of the procedure based upon Qwest's use of Dr. Habr's testimony on this issue. The Board adopted the procedure described by Dr. Habr and presented by Frontier when it approved the New Plan in the February 4, 2002, order.

Additionally, the Board, in the February 4, 2002, order expressed reservations about the provisions of III.G in the New Plan. The Board stated that it was approving the New Plan "since the evidence in the docket is not sufficient to show that the provisions violate any statute or Board rule." The Board noted that it had provided an opportunity for any interested person to intervene in opposition to the language and no person had intervened. The Board stated that it still had concerns that the provisions allowing Qwest to reduce rates in a single exchange or group of exchanges to meet competition might be anti-competitive in violation of Iowa Code § 476.95(2) and that the provisions could act as a barrier to a CLEC entering a Qwest exchange.

Under III.G, Qwest may inhibit competition in an exchange by reducing a BCS rate to any price above cost. This provision may discourage a CLEC from expending the capital and resources to enter an exchange. By adding the procedures for additional cost data, and potentially an evidentiary hearing, the Board balanced more freedom for Qwest to respond to competition with lower rates with the requirement that, upon objection, Qwest must demonstrate that there is sufficient competition and the reduced rate is above cost. This procedure protects competitors from predatory pricing by Qwest and ensures that a level of competition exists to warrant the price decrease.

**IT IS THEREFORE ORDERED:**

The application for rehearing filed by Qwest Corporation on February 25, 2002, is denied.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 26<sup>th</sup> day of March, 2002.